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## LATHAM & WATKINS LLP

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### **BY ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

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Re: Ex Parte Presentation in CC Dockets 96-98, 99-68 and 01-92

Dear Ms. Dortch:

Today Jeffrey Glover and Robert Shannon of CenturyTel, Inc. and I met with Dan Gonzalez, and Cal Simshaw, also of CenturyTel, joined the conversation by telephone. The subject of this meeting were the issues arising out of disparate rating and routing of traffic to avoid inter-carrier charges, such as through the use of "virtual NXX" arrangements, raised in the above-captioned proceedings. Specifically, we made the points noted in the enclosed materials concerning the proper treatment of "virtual NXX" traffic, and urged that the Commission should not prejudice issues that are likely to be the subject of further proceedings in CC docket 01-92; a copy of the enclosed materials was left behind. In addition, we reiterated points raised in CenturyTel's prior FCC filings concerning the lawfulness of wireless termination tariffs and CenturyTel's willingness to negotiate interconnection agreements with CMRS carriers (CC Docket 01-92). Please contact me if you have any questions.

Very truly yours,

  
Karen Brinkmann

Enclosure

cc: Dan Gonzalez, Senior Legal Advisor to Commissioner Martin

**Compensation for ISP-Bound Traffic**  
(CC Dockets 96-98, 99-68 and 01-92)

**VNXX Arrangements Were Not Contemplated In the FCC ISP-Bound Traffic Order**

- In adopting special rules for ISP-bound traffic in both 1999 and 2001, the Commission characterized the ISP's server as "local" to the originating LEC. The FCC's 2001 *ISP Remand Order* noted that "an ISP's end-user customers typically access the Internet through an ISP server *located in the same local calling area.*"
- This observation is inconsistent with the current use of virtual NXX arrangements, in which a telephone number associated with an exchange area is assigned to an ISP that is not physically located in that exchange area, and has no server in the local community.
- CenturyTel customers dial a "local" number according to the NPA-NXX code, but the traffic must be delivered to a distant ISP that does not have facilities in the local calling area in which the call originates, and in some instances not even in the same state.

**VNXX Arrangements Impose Substantial Costs on CenturyTel**

- If a dial-up Internet customer has an ISP whose server is not located in the originating LEC's local calling area, with a telephone number that accurately reflects the location of the server, the originating LEC would be properly compensated by charging access for the origination of that inter-exchange traffic. To avoid such charges, the ISP could simply establish a server in the originating LEC's local calling area.
- Under virtual NXX arrangements, CenturyTel must transport the traffic via the public switched network to a distant ISP server located outside of the LEC's local calling area. This ties up inter-office toll network facilities normally reserved for traffic that is subject to access charges, without the corresponding revenue.
- Due to the long holding times and frequency of dial-up Internet calls -- CenturyTel has customers logging 40,000 minutes per month on ISP-bound calls -- CenturyTel's inter-office trunks can quickly become congested, raising the risk of toll traffic blockage; CenturyTel may have to add interoffice trunking facilities to alleviate this congestion.
- Normally when an interoffice trunk is added to accommodate increased toll traffic, the toll traffic generates sufficient access revenue to offset the cost of the trunk. In the case of virtual NXX traffic, however, unless access charges apply, there are no added revenues to offset the added costs.
- The cost associated with the need for additional interoffice trunks would be the direct result of the decision of the terminating LEC and its ISP customer to employ a virtual NXX arrangement, rather than locate a server in the local community.
- Such arrangements also give VNXX-based ISPs an unfair cost advantage over competing ISPs that *have* established servers in the local community, sometimes driving these ISPs out of the market.

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- ILECs should not be denied the ability to recover their costs simply because another carrier assigns particular telephone numbers for the convenience of its ISP customers.

**If the ISP's Premises Are Located Outside of the Calling Party's Local Calling Area, the FCC Should Conclude that ISP-Bound Traffic Is Inter-exchange in Nature**

- The D.C. Circuit twice approved the Commission's use of end-to-end analysis to determine the jurisdictional nature of ISP-bound traffic.
- The D.C. Circuit in 2000 cited the FCC's own definition of "termination" consisting of the switching of traffic at the terminating LEC's end-office and delivery of the traffic to the called party (*i.e.*, the ISP) premises.
- Based on the end-to-end analysis, the Commission should conclude that ISP-bound traffic is inter-exchange and subject to access charges if the ISP's premises are located outside of the calling party's local calling area: When a CenturyTel end-user dials an ISP, the ISP, as an information service provider, is the customer of the terminating LEC -- the call terminates when it is handed off to the ISP.
- The FCC must acknowledge that ISP end-user customers today are accessing the Internet through ISP facilities that often are located outside of the end-user's local calling area, and that inter-carrier compensation arrangements should reflect that reality -- including the costs involved in transporting the traffic to the point of termination (the ISP's server).
- The Commission should not ignore the real costs of treating this traffic as if it were local, causing congestion on toll trunks without providing a mechanism for the ILEC to recover the cost of deploying additional facilities: Legitimate customers in CenturyTel's service area are harmed by these arrangements.

**If the FCC Concludes that ISP-Bound Traffic that Originates and Terminates in Different Local Calling Areas Is Not Subject to Access Charges, the FCC Must Require the Terminating Carrier to Establish a Point of Interconnection Within the ILEC's Local Calling Area**

- With the widespread use of virtual NXX arrangements, the ISP's premises no longer is "typically" located in the same local calling area as the dial-up customer. This is especially true in rural areas where some ISPs try to avoid installing a local server.
- The assumptions underlying the ISP-bound traffic rules thus do not apply where CLECs serving ISPs employ VNXX arrangements to avoid transport and termination costs.
- Virtual NXX arrangements undermine the current ILEC rate structure by requiring ILECs to haul traffic beyond their local calling areas without compensation.
- Virtual NXX arrangements also raise the question whether ILECs are required to provide trunks to distant points of interconnection at their own expense. It is not clear how the

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ILECs would recover the costs of such facilities.

- The FCC's rules must allow ILECs to recoup the cost of their networks.

**Resolution of VNXX Issues Implicate Larger Inter-Carrier Compensation Questions**

- The FCC should conclude that dial-up ISP-bound traffic that does not originate and terminate in the calling party's local calling area is inter-exchange in nature and, like other inter-exchange traffic, is subject to access charges. To reach any other conclusion would constitute a departure from fundamental FCC policies, including the end-to-end analysis as well as cost-recovery principles that underlie current ILEC economics."
- The Commission should not implicitly or explicitly approve use of VNXX arrangements as an access bypass scheme without considering the implications for inter-carrier compensation and ILEC cost recovery.
- If the FCC rules that ISP-bound traffic is not subject to access charges, then the Commission should also rule that the terminating carrier serving the ISP must establish a direct point of interconnection *within the originating ILEC's local calling area*.
- Alternatively, a new compensation mechanism must be established so originating LECs will be able to recover the costs associated with carrying this traffic on their networks.